

### **REMARKS**

The present Amendment amends claims 1, 5-10 and 13, leaves claims 2 and 3 unchanged, and cancels claims 4, 11 and 12. Therefore, the present application has pending claims 1-3, 5-10 and 13.

### **Preliminary Amendment**

On the Office Action Summary, the Examiner indicates in item 1 that the Office Action is responsive to the communication filed on August 28, 2003. However, Applicants bring to the Examiner's attention the Preliminary Amendment filed on October 2, 2003, which included amendments to the claims. In view of the Preliminary Amendment, the Office Action should have been responsive to the communication filed on October 2, 2003. Furthermore, based on the language used in the Examiner's rejections, it appears that the Examiner relies upon the originally filed claims rather than the amended claims filed on October 2, 2003. Accordingly, Applicants respectfully request the Examiner's consideration and acknowledgement of the Preliminary Amendment filed on October 2, 2003.

### **Claim for Foreign Priority**

Applicants filed a claim for foreign priority under 35 U.S.C. §119, claiming the right for priority based on Japanese Patent Application No. 2003-105956. The claim for foreign priority and the certified copy of the priority document were filed on July 5, 2007. However, in item 12 of the Office Action Summary, the Examiner checked both box (a) (indicating that the certified copy of the priority document has been received) and box (b) (indicating that the certified copy of the priority documents has not been received). Accordingly, it is not clearly whether or not the Examiner has

acknowledged Applicants' claim for foreign priority or the receipt of the certified copy of the priority document. Therefore, Applicants respectfully request the Examiner's acknowledgement of Applicants' claim for foreign priority and receipt of the certified copy of the priority document.

### **Claim Objections**

Claim 4 stands objected to due to informalities noted by the Examiner. As previously indicated, claim 4 was canceled. Therefore, this objection is rendered moot.

### **35 U.S.C. §112 Rejections**

Claims 6-13 stand rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter Applicants regard as the invention. As previously indicated, claims 11 and 12 were canceled. Therefore, this rejection regarding claims 11 and 12 is rendered moot. This rejection regarding the remaining claims 6-10 and 13 is traversed for the following reasons. Applicants submit that claims 6-10 and 13, as now more clearly recited, are in compliance with the provisions of 35 U.S.C. §112.

### **35 U.S.C. §102 Rejections**

Claims 1, 2 and 5 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,731,600 to Patel et al. ("Patel"). This rejection is traversed for the following reasons. Applicants submit that the features of the present invention as now more clearly recited in claims 1, 2 and 5 are not taught or suggested by Patel whether taken individually or in combination any of the other

references of record. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

Amendments were made to the claims to more clearly describe features of the present invention. Specifically, amendments were made to the claims to more clearly recite that the present invention is directed to a distribution server and a terminal device as recited, for example, in independent claims 1 and 5.

The present invention, as recited in claim 1, and as similarly recited in claim 5, provides a distribution server. The distribution server includes an input unit for image data, an image data re-construction unit, a communication unit connected to a terminal, and a monitoring trigger information generating unit for generating monitoring trigger information with which the terminal performs a receiving bit rate monitoring. According to the present invention, the monitoring trigger information generating unit inserts a generated monitoring trigger into image data input through the input unit. Also according to the present invention, the communication unit outputs a data fragment, which includes the image data, the monitoring trigger, and data size information of the data fragment for detecting a completion of the receiving bit rate monitoring, by burst transfer every data fragment. Furthermore, according to the present invention, as recited in claim 5, monitoring is performed through use of the monitoring trigger, monitoring is started from a receiving start time of a next data fragment received as specified by the monitoring trigger, and the monitoring is finished upon completion of the receipt of data of a fragment size specified in the data size information and a receiving bit rate is calculated. The prior art does not disclose all of these features.

The above described features of the present invention, as now more clearly recited in the claims, are not taught or suggested by any of the references of record,

particularly Patel, whether taken individually or in combination with any of the other references of record.

Patel teaches a system and method for determining network conditions. However, there is no teaching or suggestion in Patel of the distribution server or the terminal device as recited in claim 1 and 5 of the present invention.

Patel discloses a system and a method for determining network conditions. The system includes a server computer and a client computer. The server computer is configured to transmit data packets comprising a data object from the server computer to the client computer. The client computer includes a transmission latency detector and a transmission bandwidth detector. The transmission latency detector uses transmission time and receipt time values to determine the changes in time it takes selected portions of the data object to be transmitted from the server computer to the client computer. The transmission bandwidth detector uses identified back-to-back data packets to determine the transmission bandwidth between the server computer and the client computer.

One feature of the present invention, as recited in claim 1, and as similarly recited in claim 5, includes where the communication unit outputs a data fragment, which includes the image data, the monitoring trigger, and data size information of the data fragment for detecting a completion of the receiving bit rate monitoring, by burst transfer every data fragment. Patel does not disclose this feature.

As described in column 10, lines 47049, Patel discloses where the client computer 112 records the length of time between receiving the first data packet and receiving the second data packet. To determine this time, the transmission bandwidth detector 206 may request a timestamp from the operating system, which executes on the client computer 110 (see column 10, lines 49-52). For example, the

timestamp associated with the receipt of the first data packet may be 192 milliseconds, and the timestamp for the second data delivery packet may be 303 milliseconds. In this example, the length of time between receiving these two data packets (or second data packet receipt time) is 111 milliseconds (see column 10, lines 52-57). After recoding the length of time between receiving the first data packet and receiving the second data packet, the client computer 112 records the size of the second data packet (see column 10, lines 58-59).

Patel is quite different from the present invention. For example, Patel does not teach or suggest where the communication unit outputs a data fragment, which includes the image data, the monitoring trigger, and data size information of the data fragment for detecting a completion of the receiving bit rate monitoring, by burst transfer every data fragment, as in the present invention.

Another feature of the present invention, as recited in claim 5, includes where monitoring is performed through use of the monitoring trigger, monitoring is started from a receiving start time of a next data fragment received as specified by the monitoring trigger, and the monitoring is finished upon completion of the receipt of data of a fragment size specified in the data size information and a receiving bit rate is calculated. Patel does not disclose this feature.

According to the present invention, the monitoring unit can hold only a period in which the data being burst transferred reaches the receiving terminal. Thus, the measurement accuracy of the receiving rate can be improved, and an accurate image bit rate switching control can be performed because no measurement is carried out at a time other than the burst transferring period, in which the data is not reached, as compared with a technology for measuring a predetermined time, for example.

Patel discloses where the size of the second data packet that is recorded after recording the length of time between receiving the first data packet and receiving the second data packet. Thus, the size of the second data packet in Patel is not for detecting a completion of the receiving bit rate monitoring. Accordingly, Patel does not teach improvement in the measurement accuracy of the receiving bit rate, as in the present invention.

Therefore, Patel fails to teach or suggest “wherein said communication unit outputs a data fragment, which includes said image data, said monitoring trigger, and data size information of said data fragment for detecting a completion of said receiving bit rate monitoring, by burst transfer every data fragment” as recited in claim 1, and as similarly recited in claim 5.

Furthermore, Patel fails to teach or suggest “a communication unit connected to a distribution server, receiving a data fragment, which includes an image data, a monitoring trigger, and data size information, transferred burst transfer every data fragment” as recited in claim 5.

Even further, Patel fails to teach or suggest “wherein said monitoring unit performs monitoring through utilization of said monitoring trigger, starts said monitoring from a receiving start time of a next data fragment received as specified by said monitoring trigger, and finishes said monitoring upon completion of the receipt of data of a fragment size specified in said data size information and calculates a receiving bit rate” as recited in claim 5.

Therefore, Patel does not teach or suggest the features of the present invention, as recited in claims 1, 2 and 5. Accordingly, reconsideration and withdrawal of the 35 U.S.C. §102(e) rejection of claims 1, 2 and 5 as being anticipated by Patel are respectfully requested.

The remaining references of record have been studied. Applicants submit that they do not supply any of the deficiencies noted above with respect to the references used in the rejection of claims 1, 2 and 5.

**35 U.S.C. §103 Rejections**

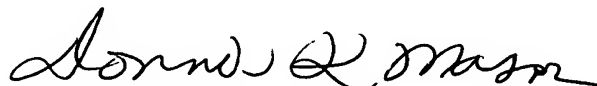
Claims 3 and 4 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Patel. As previously indicated, claim 4 was canceled. Therefore, this rejection regarding claim 4 is rendered moot. Regarding the remaining claim 3, Applicants submit that claim 3 is dependent on claim 1. Therefore, claim 3 is allowable for at least the same reasons previously discussed regarding independent claim 1.

In view of the foregoing amendments and remarks, Applicants submit that claims 1-3, 5-10 and 13 are in condition for allowance. Accordingly, early allowance of claims 1-3, 5-10 and 13 is respectfully requested.

To the extent necessary, the applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C., Deposit Account No. 50-1417 (referencing Attorney Docket No. 501.43083X00).

Respectfully submitted,

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